IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 89 OF 1988

The Commissioner of Income-tax,
Bombay City-II, Bombay. ...Applicant
V/s.
M/s.Damodar Bulk Carriers Ltd. ...Respondent

Mr.Ashok Katangale for Applicant.
None for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JUNE 28, 2005.

P.C. :-

1. On the application of the Revenue under Section 256(1) of the IT Act, the following question was referred for the opinion of this Court :-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in interpreting the words 'period of employment outside India' occurring in sec.40A(5)(b)(i) as including services of personnel on ships under the Indian Flag, for the period the ships are on the high seas or in non-Indian Port? "

2. Heard learned Counsel for the Revenue. He fairly states that the above reference has already been answered by this Court in the case of **Commissioner of Income Tax V/s. Indo Oceanic Shipping Co.Ltd. reported in ITR Vol.247 (2001), Page 247**; wherein this Court has rejected the contention of the Revenue that a ship with an Indian flag is part of Indian Territory as such payments made to the floating staff, should be considered as payment made within the Indian territory.

3. In this view of the matter, the above question for the reasons recorded in the case of **Indo Oceanic Shipping Co.Ltd. (Supra)** is answered in the negative i.e. against the Revenue and in favour of the Assessee. Accordingly, Reference stands answered with no order as to costs.

(V.C. DAGA, J.)

(A.S. AGUIAR, J.)